



Presidential Decree on Legal Protection for Advocates: A Neglected Pillar of Justice in a State Based on the Rule of Law

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ABSTRACT

In a state based on the rule of law, the existence of advocates as one of the pillars of law enforcement should be firmly guaranteed by the state. However, in practice, advocates often experience criminalization, intimidation, and even violence while carrying out their professional duties, especially when assisting vulnerable groups or handling cases that overlap with power. The background of this problem encourages the importance of the Presidential Regulation (Perpres) on Legal Protection for Advocates as a concrete effort by the state to protect the advocacy profession as part of a fair justice system. The formulation of the problem in this study is: *Why is legal protection for advocates still weak in practice?* and *What is the urgency of establishing a Perpres as an instrument of legal protection for advocates in the context of a state based on the rule of law?* The method used is normative juridical with a statute approach, a conceptual approach, and a case approach to the criminalization of advocates. The results of the discussion indicate that the weak protection of advocates is caused by the lack of implementation of the norms of Article 16 of the Advocates Law, the absence of a mechanism for enforcing immunity rights, and the absence of derivative regulations that are binding on law enforcement officers. In conclusion, the formation of a Presidential Regulation is a strategic and urgent step to ensure that advocates are protected institutionally, while strengthening their position in upholding justice and human rights. Without concrete protection, the rule of law risks losing an important pillar in its justice system.

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1. INTRODUCTION

The legal profession is a fundamental pillar of the judicial system, ensuring public access to justice [1]. Within the framework of a state based on the rule of law, advocates not only serve as defenders of citizens' legal interests but also as part of the oversight mechanism for the use of state power through legal instruments. This strategic position places advocates as crucial actors in maintaining a balance between power and the protection of human rights. Friedrich Julius Stahl emphasized that a state based on the rule of law rests on the guarantee of human rights and the supremacy of law, which must encompass all components of law enforcement, including advocates as an integral part of both the criminal and civil justice systems [2].

However, in the practice of law enforcement in Indonesia, advocates often face various forms of intimidation, criminalization, and rights violations when carrying out their professional duties. Although normatively advocates have been recognized as law enforcers as regulated in Article 5

paragraph (1) of Law Number 18 of 2003 concerning Advocates and reaffirmed through Constitutional Court Decision Number 26/PUU-XI/2013, reality shows that there is still an unequal position between advocates and other law enforcement officers. In addition, the enforcement mechanism for Article 16 of the Advocates Law concerning advocate immunity rights has not been running effectively, and protection for advocates who advocate for human rights issues and the public interest is still very limited [3].

The neglect of legal protection for advocates fundamentally reflects the state's failure to achieve substantive justice. From Satjipto Rahardjo's progressive legal perspective, law should not be understood merely as a collection of norms, but rather as a means to realize the values of humanity and justice that exist within society. [4] Advocates who carry out their professional duties to defend their clients' legal interests should receive legal protection and immunity as long as they do so within the law and the professional code of ethics. However, the practice of criminalizing advocates due to legal statements or defense strategies they employ remains

common, indicating a legal vacuum and a weak political commitment to strengthening the position of advocates as an independent and integrity-based profession [5].

The urgency of strengthening legal protection regulations for advocates is increasingly apparent as cases of criminalization against advocates increase, both by law enforcement officers and by parties who feel disadvantaged by the legal defense provided. Law Number 18 of 2003 concerning Advocates has not provided adequate technical and operational regulations to guarantee such protection. In fact, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly guarantees the right of every person to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law [6]. Therefore, further regulations are needed in the form of a Presidential Regulation as an operational policy instrument to fill the legal vacuum and provide certainty of protection for the advocate profession.

Based on this background, this study aims to normatively analyze the urgency of establishing a Presidential Regulation on legal protection for advocates as a concrete manifestation of the state's responsibility within the national legal system. Furthermore, this study also examines the impact of the absence of such protective regulations on the weakening of advocates' function in upholding law and justice. Theoretically and practically, this research is important considering the increasing need for protection for the legal profession in a democratic system. By utilizing Friedrich Julius Stahl's theory of the rule of law and Satjipto Rahardjo's concept of progressive justice, this paper is expected to provide a strong argumentative basis to encourage the need for policy intervention at the executive level through the establishment of a Presidential Regulation as a guarantee of advocates' constitutional rights.

2. RESEARCH METHODS

This research is a normative legal research (normative juridical) that uses a statute approach *and* a conceptual approach. The statutory approach is carried out by systematically examining relevant legal provisions, especially Law Number 18 of 2003 concerning Advocates, the 1945 Constitution of the Republic of Indonesia, and court decisions related to the status and legal protection of advocates. Meanwhile, the conceptual approach is used to examine relevant legal principles, doctrines, and theories, including Friedrich Julius Stahl's theory of the rule of law and Satjipto Rahardjo's concept of progressive justice. The legal materials used consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively using prescriptive analysis techniques to formulate legal arguments regarding the urgency of establishing a Presidential Regulation as an instrument of legal protection for the advocate profession.

3. RESULTS AND DISCUSSION

Legal protection for advocates in Indonesia currently still exhibits a normative-declarative character and is not yet supported by technical and operational legal instruments. Law Number 18 of 2003 concerning Advocates has indeed recognized advocates as law enforcers who have an equal status with other law enforcement officers, but this recognition

is not followed by the regulation of effective protection mechanisms when advocates carry out their professional duties. The absence of this technical regulation becomes increasingly problematic when advocates handle cases that are political, strategic, or concerning the public interest, because the legal defense actions taken are often perceived as unlawful acts. This condition opens up space for the criminalization of advocates and reflects the weak support of the state in guaranteeing the protection of the legal profession in a just legal state system [7].

This weakness in legal protection is reflected in the increasing number of cases of intimidation and criminalization of advocates and legal aid providers (PBH) in the past five years. Empirical data collected from various Legal Aid Institutions and advocate organizations shows that advocates who carry out their advocacy functions, whether in criminal, civil, human rights, state administrative disputes, or non-litigation advocacy, often face the risk of criminalization and other repressive actions. Data on cases of criminalization of advocates in the past five years can be seen in the following table:

Table 1. Criminalization Cases of Advocates and PBH in the Last Five Years

Year/Region	Number of Advocates / PBH	Case Context
2015–2021 (LBH Jakarta)	9	PBH was arrested while carrying out legal assistance duties
2018–2021 (Manado Legal Aid Institute)	5	Criminalization in the accompaniment of Thursday Action
2017–2021 (LBH Yogyakarta)	4	Arrests and coercive measures, including urine tests, without legal basis
2017–2021 (LBH Semarang)	5	Assistance in environmental pollution cases and non-litigation advocacy
2025 (Tony Budidjaja)	1	Criminalization of advocates in the process of executing arbitration decisions

The data shows that the criminalization of advocates is not incidental, but rather reflects a recurring structural pattern in law enforcement practices. The absence of an effective legal protection mechanism directly impacts the independence of advocates in carrying out their defense function, while also threatening the principle of *due process of law* [8]. From the perspective of Friedrich Julius Stahl's theory of the rule of law, this condition contradicts the principle of the supremacy of law and the guarantee of human rights, while within Satjipto Rahardjo's progressive legal framework, the practice of criminalizing advocates reflects a law that has failed to carry out its humanitarian and justice functions. Therefore, operational policy intervention is needed to close this legal loophole and provide real protection for advocates in carrying

out their profession. [9].

This study shows that one of the fundamental problems in legal protection for advocates lies in the ambiguity of interpretation regarding the limits of professional immunity of advocates among law enforcement officials. In practice, statements made by advocates in court, including those contained in defense documents such as *pleas*, *replies*, and *duplicates*, are often perceived as actions that can be held criminally liable. In fact, these statements are an integral part of the legal defense function and should be protected as long as they are carried out in good faith and within the legal corridor. The absence of regulations that clearly outline the limits of protection and responsibility of the legal profession leaves room for criminalization through the application of flexible articles, such as defamation or insults against officials, thereby threatening the principle of the rule of law and legal certainty itself.

Normatively, the legal profession has a special right (*privilege*) in the form of legal immunity that provides protection from civil and criminal lawsuits in carrying out their professional duties, both in and out of court, as long as they are carried out in good faith. This immunity right is intended to guarantee the independence of advocates in providing legal defense freely, professionally, and without pressure. However, in law enforcement practice, this right is often interpreted narrowly or even ignored by law enforcement officials, so that advocates still face legal proceedings even though the actions taken are within the scope of their professional duties [10].

From an institutional perspective, the weak legal protection for advocates is also caused by the absence of a standard complaint and report handling mechanism when advocates are reported for their professional actions. There is no specific protocol within the Police, the Prosecutor's Office, or the Supreme Court that regulates the procedures for handling reports against advocates in the performance of their professional duties. This differs from the mechanisms applicable to other law enforcement professions, such as judges and prosecutors, which have a clear and structured internal oversight and complaint system through special institutions. This institutional imbalance places advocates in a position that is more vulnerable to criminalization and repressive actions, even though advocates are normatively recognized as law enforcers [11].

The absence of a structured and equal protection mechanism for advocates has direct implications for disrupting the independence of advocates in carrying out their defense function and weakening the principle of *due process of law*. From the perspective of Friedrich Julius Stahl's theory of the rule of law, this condition contradicts the principle of the supremacy of law and the guarantee of human rights, while in Satjipto Rahardjo's progressive legal framework, the practice of criminalizing advocates reflects a law that has failed to carry out its humanitarian and justice functions. Therefore, this finding further emphasizes the need for operational regulations to firmly regulate the limits of the advocate profession's immunity, legal protection mechanisms, and the governance of handling reports against advocates as a concrete form of the state's responsibility in ensuring legal certainty and justice [12].

The absence of a Presidential Regulation (Perpres) specifically regulating legal protection for advocates results in the absence of an operational policy instrument that can be

effectively implemented by relevant ministries and institutions, such as the Ministry of Law and Human Rights, the Police, the Prosecutor's Office, and the Supreme Court. In this context, the Perpres serves not only as a political affirmation of state law for the advocacy profession, but also as a basis for administrative legitimacy to establish an integrated and binding legal protection mechanism across institutions. Without such a policy umbrella, legal protection for advocates remains partial and dependent on the subjective interpretation of law enforcement officials.

In addition to normative and institutional issues, this research also shows that the public and law enforcement officials' perceptions of the legal profession are still fraught with negative stigma. Advocates are often perceived as defenders of criminals or simply a profession oriented towards financial gain, without understanding the strategic role of advocates in guaranteeing the right to defense and access to justice. This stigma is reinforced by media coverage that tends to highlight the negative side of advocates without adequate legal education. The absence of institutional and educational legal protection exacerbates this situation, making efforts to build the image of advocates as legitimate and constitutional implementers of justice functions increasingly difficult [13].

An analysis of statutory regulations and Constitutional Court decisions shows that the state has indeed recognized the importance of the role of advocates normatively, but this recognition has not been articulated in concrete and binding policies. Constitutional Court Decision Number 26/PUU-XI/2013, for example, has affirmed the strategic position of advocates as law enforcers equal to police, prosecutors, and judges in the criminal and civil justice systems [14]. However, this decision has not been followed up in the form of technical policies that can serve as operational guidelines for other law enforcement officials, so that protection for advocates remains normative and ineffective in practice.

From the perspective of a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the law should be the supreme commander in regulating power and social relations, including in guaranteeing equal protection for all law enforcers. However, reality shows that legal protection for advocates is still unequal when compared to protection for judges and prosecutors who have special monitoring and protection mechanisms [15]. This inequality reflects the deviation between constitutional norms and implementation practices, and has an impact on weakening the principle of *due process of law* and the independence of the legal profession. In fact, Article 28D paragraph (1) and Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia expressly guarantee legal certainty and protection of human rights as the responsibility of the state.

Article 16 of Law Number 18 of 2003 concerning Advocates explicitly states that advocates cannot be sued civilly or criminally for carrying out their professional duties in good faith for the defense of clients in court. However, this norm is not yet equipped with adequate protection protocols when advocates face criminalization in practice. Unlike judges and prosecutors who are protected through the Judicial Commission Law and the Prosecutor's Office's internal regulations, advocates do not have a similar mechanism to guarantee their professional protection. This legal vacuum makes advocates vulnerable to the use of flexible articles, such

as defamation, incitement, or insults, so that the advocate's professional actions in defending clients are actually used as the basis for criminal reports [16]. This condition indicates the failure of the legal system to guarantee procedural justice and reinforces the urgency of establishing a Presidential Regulation as an operational and binding policy instrument.

The phenomenon of criminalization of advocates reflects a serious distortion in law enforcement practices. In numerous cases, advocates are reported or threatened with legal action by law enforcement officials or opposing parties solely for carrying out their professional duties. Professional actions in the courtroom, such as filing objections, preparing *pleas*, or asking critical questions, are often interpreted as violations of the law due to the lack of a clear line between legal criticism and personal attacks in the interpretation of the authorities. This condition contradicts the principle of functional immunity that should protect advocates while carrying out their duties within the jurisdiction [17]. When advocates are criminalized for their professional actions, the public's right to defense and access to justice are directly threatened.

From an institutional perspective, the law enforcement system lacks a specific protocol for handling cases involving advocates. Criminal reports against advocates are processed through standard procedures without requiring prior clarification with professional organizations or advocate honorary councils. Consequently, advocates who are reported face criminal proceedings without considering the context of their professional duties. This situation differs from the mechanisms for handling complaints against judges and prosecutors, which are equipped with institutional oversight and protection systems through their respective supervisory bodies [18].

From the perspective of Friedrich Julius Stahl's theory of the rule of law, human rights protection and legal certainty are fundamental elements that must be realized through just and balanced legal instruments. When a state fails to provide adequate legal protection for key actors in the judicial system, such as advocates, it fails to fully fulfill the characteristics of a *rechtsstaat*. Legal protection does not stop at the level of the constitution and laws, but must be translated into operational and applicable policies [19]. In this context, the Presidential Regulation becomes a strategic legal instrument to fill the regulatory gap in the protection of advocates.

In line with this, Satjipto Rahardjo, through the concept of substantive justice, emphasizes that the law must side with social reality and the need for justice that exists in society, not solely on normative texts. Protection for advocates needs to be understood as an effort to maintain the continuity of the legal defense function in the justice system, considering that advocates are in a vulnerable position when defending the interests of clients and the public interest. The state is required to be actively present through affirmative policies to protect the advocacy profession, so that the public does not lose legitimate channels of defense. Without concrete policy intervention, substantive justice will be difficult to fully realize in legal practice in Indonesia [20].

Within the framework of public policy, the Presidential Regulation can function as a cross-sectoral regulatory instrument that is both executive and implementative. The Presidential Regulation is not intended to

replace the law, but rather to provide technical guidelines for law enforcement agencies to ensure consistent protection of the legal profession. These regulations can include internal clarification mechanisms before processing criminal reports against advocates, security protection while carrying out duties, and coordination procedures between law enforcement agencies. Thus, the Presidential Regulation also serves as a *check and balance* against the use of law enforcement authority that has the potential to be repressive against advocates [21].

The drafting of a Presidential Regulation on legal protection for advocates is an urgent and indispensable requirement to strengthen the rule of law in Indonesia. The findings of this study indicate that the criminalization of advocates and Legal Aid Workers (PBH) is not an isolated incident, but rather a recurring pattern resulting from the absence of an operational legal protection mechanism. Various cases of criminalization experienced by advocates and PBH, as reflected in the experiences of LBH Jakarta and LBH Semarang, demonstrate that advocates' professional actions in providing legal aid are often used as the basis for criminal reports, even accompanied by procedural violations and repressive actions by law enforcement officers. This situation significantly threatens the principle of the independence of the legal profession and the public's right to fair and effective legal aid [22].

The absence of institutional protocols for handling reports against advocates exacerbates this vulnerability. The absence of mandatory clarification or coordination with professional organizations before criminal proceedings are initiated results in advocates being treated like ordinary criminals, without considering the context of their professional duties. This practice contradicts the principle of functional immunity for advocates as stipulated in Article 16 of Law Number 18 of 2003 concerning Advocates, and deviates from the principles of *due process of law* and the protection of human rights guaranteed by the 1945 Constitution of the Republic of Indonesia [23].

Therefore, the establishment of a Presidential Regulation on legal protection for advocates is a strategic instrument for substantively operationalizing the principle of the rule of law. This Presidential Regulation serves not only as a political affirmation of state law but also as a binding policy basis for law enforcement agencies in guaranteeing the protection of advocates in carrying out their professional duties. The drafting of this Presidential Regulation ideally involves professional advocate organizations, academics, and relevant state institutions to ensure that the resulting substance is comprehensive, applicable, and responsive to the realities of legal practice. With the presence of this Presidential Regulation, the state can demonstrate a real commitment to building a just, equal, and professional justice system and ensuring access to justice for all citizens.

4. CONCLUSIONS

The legal profession occupies a strategic position in the judicial system as part of law enforcement and protectors of citizens' constitutional rights. Ideally, this role should be supported by adequate legal protection from the state. However, this research finding indicates that advocates still frequently experience criminalization and intimidation in carrying out their professional duties, both inside and outside

of court. This situation not only harms individual advocates but also violates the principle of the rule of law, given that advocates are an integral element in achieving a fair trial. The regulatory vacuum, characterized by the absence of technical and operational provisions regarding legal protection for advocates, is a major factor demanding state intervention through concrete legal policies.

In this context, the existence of a Presidential Regulation as an operational legal protection instrument is essential to fill the existing legal vacuum. The Presidential Regulation should contain norms and mechanisms that guarantee protection for the functions and duties of advocates, and prevent repressive actions by law enforcement officers without following fair and measured procedures. Thus, the principle of substantive justice can be realized not only at the normative level, but also in the practice of daily law enforcement. The state, through its executive authority, has a moral and constitutional responsibility to ensure that advocates can carry out their profession safely, independently, and with integrity to maintain a just and democratic national legal system.

4.1 Suggestions

The government, through the President of the Republic of Indonesia, needs to immediately enact a Presidential Regulation on Legal Protection for Advocates as a concrete step to ensure the sustainability, independence, and integrity of the legal profession within the judicial system. The Presidential Regulation must be designed beyond declarative intent, but must also include substantive, procedural, and institutional arrangements that can be effectively implemented by law enforcement officials. The drafting of the Presidential Regulation's substance should ideally involve key stakeholders, including professional advocate organizations, judicial institutions, and legal academics, to ensure that the resulting regulations are comprehensive, proportional, and responsive to the needs of law enforcement practice.

In addition to strengthening regulations, legal protection for advocates needs to be supported by increasing the capacity and understanding of law enforcement officials through regular education and training. Law enforcement officials need to clearly understand the boundaries between professional actions of advocates protected by the principle of immunity and actions that can truly be classified as violations of the law. Therefore, dissemination of information regarding the rights and obligations of advocates and the mechanism for handling reports against advocates must be an integral part of the implementation of this Presidential Regulation. The synergy between strong regulations, increased capacity of officials, and reform of law enforcement institutions is expected to strengthen the protection of the legal profession while improving the quality of justice received by the public.

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